IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2006

CORAM:

THE HONOURABLE Mr.JUSTICE K.MOHAN RAM

W.P.No.8739 of 2006

M/s.Sree Rajendra Textiles
rep. by its Partner
S.Amarish
CK.21/1-A, Rathi Complex
Ist Floor, Lakhi Chautra
Varanasi 221 001. ... Petitioner

Vs.

1. The Commissioner of Customs (Sea Port)
Custom House
No.33, Rajaji Salai
Chennai-600 001.

2. The Deputy Commissioner of Customs
Gr.7-B, Custom House
No.33, Rajaji Salai
Chennai-600 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to permit clearance of Mulberry Raw Silk consignments covered under Bills of Entry Nos. 972198 and 972199 dated 4-3-2006; 976430 dated 8-3-2006 and 957591 dated 4-2-2006 imported by the petitioner under the Sales Contract No.25 SZHCS 115 dated 24-6-2005 by assessing the same.

For Petitioner : Mr.K.Jayachandran
For Respondents : Mr.V.T.Gopalan, ASG
for Mr.T.S.Sivagnanam, ACGSC

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O R D E R

By consent of both parties, the Writ Petition itself is taken up for final disposal.

2. The prayer in the Writ Petition is for the issuance of a Writ of Mandamus, directing the respondents to permit clearance of Mulberry Raw Silk consignments covered under Bills of Entry Nos. 972198 and 972199 dated 4-3-2006; 976430 dated 8-3-2006 and 957591 dated 4-2-2006

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imported by the petitioner under the Sales Contract No.25 SZHCS 115 dated 24-6-2005 by assessing the same.

3. Mr.K. Jayachandran, the learned counsel appearing for the petitioner brought to the notice of this Court that the CESTAT, Chennai, has rejected the Appeal filed by the Department against the order of the Commissioner of Customs (Appeals) by its order dated 20-3-2006, confirming the order of the Commissioner of Customs (Appeals) in a matter relating to similar goods.

4. According to the learned counsel for the petitioner, for the same goods, for the other importer the value declared at 13.94 US $ per kg, has been confirmed by the Tribunal finally. According to the learned counsel, the Tribunal has followed the decision of the Honourable Supreme Court reported in 2000 (122) ELT 321 (SC) (EICHER TRACTORS LIMITED Vs. COMMISSIONER OF CUSTOMS, MUMBAI). Based on the above said submission, the learned counsel for the petitioner has submitted that the value declared by the petitioner should be accepted by the respondents and allow clearance of the goods imported by the petitioner.

5. Per contra, Mr.V.T.Gopalan, the learned Additional Solicitor General, has submitted that each transaction should be considered independently and the price fixed for the goods imported by one importer cannot be applied as the price for the goods imported by another importer, as various factors are involved in fixation of price.

6. However, taking into consideration of the fact that the Tribunal has accepted the price declared by the importer in respect of same goods, the learned counsel for the petitioner has submitted that the petitioner is willing to pay duty on the declared value and willing to execute a personal bond towards the differential duty.

7. According to the submissions made by either side, the Department is demanding duty to be paid on the value of 22 US $ per kg. The learned Additional Solicitor General submitted that for the differential duty, the petitioner should be directed to furnish Bank Guarantee. The learned counsel for the petitioner submitted that taking into account of the orders passed by the Tribunal and considering the fact that the petitioner is a regular importer and the petitioner has paid huge amount of duty in respect of the same goods imported by him in the past, the petitioner may be permitted to execute a Personal Bond, instead of Bank Guarantee, towards the differential duty.

8. Considering the arguments of the learned counsel on either side, the respondents are directed to release the Mulberry Raw Silk Consignments to the petitioner in the above Writ Petition on payment of duty on 15.25 US $ per kg and executing a Personal Bond for 6.75 US $ per kg and also subject to the following conditions:

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i) The respondents may proceed with their investigation/ assessment.

ii) The petitioner shall co-operate in the matter of investigation/assessment.

On complying with the said conditions by the petitioner, the respondents are directed to release the goods within a period of seven days.

9. The Writ Petition is disposed of accordingly. Consequently, the connected W.P.M.P.No. 9665 of 2006 is closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

paa

To

1. The Commissioner of Customs (Sea Port)
Custom House
No.33, Rajaji Salai
Chennai-600 001.

2. The Deputy Commissioner of Customs
Gr.7-B, Custom House
No.33, Rajaji Salai
Chennai-600 001.

+ 1 cc to Mr K.Jayachandran, Advocate SR 15678

+ 1 cc to Mr T.S.Sivagnanam, SCGSC Advocate SR 15717

JE(CO)
CGS 31/3

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